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Current Topics.

Modern Piracy.

IT might have been thought that in these days the crime of piracy was unthinkable, but alas for the boasted civilisation of the twentieth century, and as a cynical comment thereon, there has been a serious recrudescence of this grave offence, hence the assembly of representatives of most of the European nations, unfortunately not all, at Nyon, in Switzerland, to devise measures for its suppression in the Mediterranean, where submarine piratical attacks on merchant shipping have been occurring with deplorable frequency. It is earnestly to be hoped that the deliberations of the delegates may eventuate in measures which will effectively counter the attacks and restore peace in the waters of the midland sea. The crime of piracy has always been treated by civilised nations as one of the most serious, and, therefore, to be met by corresponding severity. As BLACKSTONE put it, a pirate has by reason of his depredations renounced all the benefits of society and government and has reduced himself afresh to the savage state of nature by declaring war on all mankind; therefore mankind must declare war against him. By a statute of GEORGE I, trading with known pirates or furnishing them with stores or ammunition or in any way confederating with them was to be deemed piracy, and all accessories to piracy were declared to be principal pirates. By the same Act it was further provided, in order to encourage the defence of merchant vessels against pirates, that the commanders or seamen wounded, and the widows of those killed in attacking pirates were to be entitled to a bounty proportioned to the value of the cargo on board, and further, that seamen wounded in such engagements should be entitled to the pension of Greenwich Hospital. On the other hand, if the commander behaved in cowardly fashion by not defending his ship, he was to forfeit all his wages, and, in addition, was to be liable to imprisonment for six months. In the past our seamen did what was expected of them in the fight against piracy, and doubtless they will again show their resource in the work of stamping out this heinous offence.

Supreme Court Business.

SOME of our readers will have perused the leading article on the work of the courts, which appeared in *The Times* some weeks ago, but it will not, perhaps, be out of place if brief reference is made here to a couple of points which, in the view of the writer of that article, call for criticism. The first relates to the constitution of a temporary third Court of Appeal, which, as readers know, has been rendered necessary in order to keep pace with the increasing volume of work falling to that tribunal largely as a result of appeals from the county courts being heard before it instead of by a Divisional Court. Objection is also taken to this system whereby county court appeals go direct to the Court of Appeal, and it is stated that in any event the importance of such appeals does not warrant their being dealt with in this way. It must, perhaps, be confessed that one of the principal advantages of the new system is that it eliminates one of the appellate tribunals before which the litigant in the county court could previously be taken, and that if, as is tentatively suggested, the decision of a Divisional Court when hearing a county court appeal were rendered final this advantage would disappear. But in view of the complexity and importance of many of the cases which now come before the county court, it may be questioned whether the hearing of appeals by three instead of two members of the Supreme Court of Judicature has not much to recommend it. Moreover, the derival from two sources instead of one of the matter for hearing by the Court of Appeal should have some effect upon the regularity of the demands made upon that court while the temporary constitution of a third Court of Appeal affords an obviously convenient method of meeting exceptional demands. The question is a delicate one, and there is doubtless much to be said on both sides, but it may be suggested that the present system is deserving of a longer test than that to which it has yet been subjected.

Summary Procedure (Domestic Proceedings) Act, 1937.

THE attention of readers may be drawn to the recent Home Office Circular on the subject of the Summary Procedure (Domestic Proceedings) Act, 1937, which has been sent to clerks to the justices throughout the country with the request that the former shall furnish each justice with a copy. In view of the article on the Act which appears at p. 744 of this issue, it is unnecessary to deal with the matter exhaustively here. The contents of the circular may, however, be shortly referred to. It is intimated that ss. 1–3 of the Act apply to "domestic proceedings" as defined in the Schedule; s. 4 only to domestic proceedings under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895–1925, and s. 6 to all proceedings under the Guardianship of Infants Acts, 1886–1925, the above-named Acts and to proceedings in any matter of bastardy. It may be remembered that the Summary Courts (Social Services) Committee rejected the

proposal that justices who adjudicate in domestic proceedings should be selected from a panel of those specially experienced and qualified for the work, and s. 1 of the new Act reflects the recommendations of the committee with reference to the constitution of courts of summary jurisdiction. This section deals with the courts outside the City of London and the Metropolitan Police Court area, provision for the latter being made in s. 9. The circular points out that the object of s. 2 (1) is to secure as far as possible effective separation of domestic proceedings from other business of the court, and the Home Secretary expresses himself as confident that justices will give effect to the provision in the spirit as well as in the letter of the law, bearing in mind suggestions made in the circular of 30th July, 1936 (80 SOL. J. 661), as to the atmosphere of the court where domestic proceedings are taken. The circular also alludes to restrictions contained in the Act as to admission of the public (s. 2 (2) and (3)) and newspaper reports (s. 3).

Conciliation in Matrimonial Cases.

SECTION 7 of the Act, the circular intimates, makes it clear that the task of conciliation, as well as other functions which a probation officer may be asked to perform under the Act, can be undertaken in performance of his or her statutory duties, while in requesting a probation officer or other person to act as conciliator, the court is to have regard to the religious convictions of the parties (s. 8). Attention is also drawn to the new machinery furnished by s. 4 in regard to "statements of allegations." The form in which such statements are to be made is prescribed by the Summary Jurisdiction Rules, 1937 (S.R. & O. 1937, No. 798/L11), which were set out on p. 719 of our issue of 4th September. Section 6, it is noted, makes obligatory a practice which has already been adopted by many experienced magistrates. The circular states that parties in proceedings to which the section relates (see previous paragraph) who are not legally represented are frequently unable effectively to examine their witnesses or to cross-examine other witnesses. It will now become the duty of the court to assist any such party by ascertaining from that party what are the matters about which a witness may be able to depose or on which a witness ought to be cross-examined, as the case may be, and by putting or causing to be put to the witness such questions as in the interests of that party may appear to the court to be proper. Allusion is also made to investigation by probation officers at the request of the court into a party's income under ss. 5 and 7 of the Act. The new procedure, it is stated, places in the hands of justices a valuable instrument for ensuring that orders for periodical payments are just and equitable in amount, having regard to all circumstances; and the Home Secretary expresses the belief that probation officers can give the court material assistance in conducting social investigations of the character in question and the hope that their services will be fully utilised for the purpose. Due regard, it is intimated, should be paid by the courts to the additional work involved when determining the size of probation staffs.

Fume Poisoning.

LAST week we alluded to a series of articles which appeared in the September issue of *The Practitioner*, and made some remarks concerning a couple of them. Want of space compelled us to defer consideration of others, not less interesting, of the same series and these are dealt with hereunder. From the legal aspect, perhaps the most important section of the article entitled "Fume Poisoning and Motoring," by Sir WILLIAM WILLCOX, consulting physician, St. Mary's Hospital, and medical adviser to the Home Office, is that which indicates the close similarity of the early symptoms of carbon monoxide poisoning to those of alcoholic intoxication. Reference in this connection is made to an address given by the late Professor J. S. HALDANE, before the Medico-Legal Society, in which it was stated that the mental and moral deterioration in carbon monoxide poisoning seemed to take rather different forms in different persons just as with the effects of alcohol. "Some persons," Professor HALDANE continued, "simply become more and more torpid, others become foolishly hilarious, while others become extremely ill-mannered, quarrelsome and almost dangerous. It is a curious fact, however, that at whatever stage of incompetence one may be, one remains quite confident in one's own judgment just as a drunken man is. It is very easy to mistake carbon monoxide poisoning and its after effects for drunkenness and its after effects." Instances are given of such mistakes having been made, and Sir WILLIAM states that it cannot be too strongly urged that great care should be taken that in closed cars there is no escape of exhaust fumes into the interior of the car from faulty joint connections of the exhaust pipe. The danger of allowing an engine to run in a closed garage is alluded to in connection with the same gas. Carbon dioxide, which also exists in high percentage in exhaust fumes, is stated not to be dangerous of itself owing to its dilution with the air. Deleterious results which may follow from the inhalation of the vapour of petrol and benzol, the importance of taking steps to prevent the products of the imperfect combustion of heavy lubricating oils entering the car—the presence of which points to failure of an exhaust pipe connection with its concomitant danger of carbon monoxide poisoning—and the special considerations affecting the handling and distribution of ethyl petrol, are among other matters dealt with in the article. Reference in connection with the last point is made to the Reports of the Departmental Committee on Ethyl Petrol in 1928 and 1930, and it is pointed out that the addition of the small percentage of lead tetra-ethyl (itself a very poisonous liquid) was not shown to add to the risks associated with the use of ordinary petrol and benzol.

Common Motoring Injuries.

THE article on "Common Injuries and Accidents due to Motoring," by Dr. A. M. A. MOORE, Assistant Surgeon and Assistant Orthopædic Surgeon, London Hospital; Surgeon, Poplar Hospital for Accidents; Assistant Surgeon with charge of the Orthopædic Department, King George Hospital, Ilford, while chiefly concerned with matters of exclusively medical import, contains a number of observations which may be of interest to readers. The writer draws attention to the high proportion of fractures and head injuries sustained by motor cyclists, to the decrease in recent years of injuries sustained by cranking up a stationary car and to the increased possibility of injury from pointed door handles to cyclists and pedestrians as a result of the modern tendency to "stream-line" cars. It is suggested, in the latter connection, that manufacturers should sink the handle into a depression on the door. Another suggestion is the provision of a telescopic arrangement in the steering column which would allow the steering wheel to move up and down when any sudden pressure was placed upon it and accordingly reduce injuries caused to a driver by being thrown forward on a sudden halt. The provision of unsplinterable glass for windscreens has reduced the number of cases of severe facial and head cuts and eye injuries, but on the other hand, it is said, fractures of the skull resulting from direct violence, and less severe head injuries leading to cerebral concussion, are occurring with greater frequency. Passenger risks, including severe cerebral concussion by being thrown against the roof of a car travelling at high speed over a bumpy road, and elbow dislocations as a result of a sudden impaction between the passenger's elbow and the front seat are also alluded to, with the observation that only too frequently cases have occurred in which following an accident the passenger has been seriously injured and has in fact died, whereas the driver has not sustained any injury worth recording. In connection with the last point it may not be out of place to recall the words of SWIFT and ATKINSON, JJ., on the subject of compulsory passenger insurance, which were recently noted in these columns (81 SOL. J. 506, 618).

Northern Ireland "Validity" Appeal in the House of Lords.

THE House of Lords, in *Gallagher* v. *Lynn* (81 SOL. J. 609), for the first time had to consider an appeal from the Northern Ireland Court of Appeal involving the decision of a question as to the constitutional validity of a statute passed by the Parliament of Northern Ireland.

Several dairy farmers, whose farms were situated in the county of Donegal (Irish Free State), but at no great distance from Londonderry (Northern Ireland), were in the habit of selling their milk in the city of Londonderry. Until the coming into force in Northern Ireland of the Milk and Milk Products Act of 1934, there was no restriction upon such sale, apart from a customs duty imposed by the Imperial Government at the "land frontier" of the United Kingdom. The Act of 1934 makes provision as follows:—

That a person shall not sell milk except under and in accordance with the Act;

That a person shall not sell milk of grade A, B or C (defined by the Act) unless he holds either a producer's or a distributor's licence;

That the Ministry of Agriculture shall on application made in the prescribed manner grant to any person, on the prescribed conditions, a licence;

That an authorised officer shall have power to enter and inspect the land and premises occupied by a licence-holder in connection with his business, and examine and take samples of, milk found there.

The Act gave to the Ministry a power to make regulations, and regulations so made provide that a milk producer shall permit any authorised officer to inspect his herd and examine premises, and that the Ministry, before granting a producer's licence, shall satisfy itself that the applicant's arrangements for dealing with milk are such as will enable him to comply with the Act and regulations.

When this system of regulation was set up, the owner of a dairy farm in Donegal, having asked for a producer's licence and being refused, applied for a *mandamus* to the Ministry to grant him a licence. The rule was discharged by the King's Bench Division, and this decision was affirmed by the Court of Appeal. The ground taken by the Ministry, and upheld by the courts, was that it was impossible to apply the Act to producers whose premises were outside the territory of Northern Ireland, and that such persons were not entitled to a licence under the Act.

At this stage the appellant in the case which came before the House of Lords—another dairy farmer in Donegal—having also been refused a licence, was convicted and fined by the Londonderry justices for selling milk in the city without a licence, in contravention of the Milk Act. He appealed against the conviction to Londonderry Quarter Sessions; the appeal was heard by the learned Recorder, who dismissed the appeal and drew up a "speaking order" stating the grounds of his decision. At the hearing of the complaint the appellant had contended that the Milk Act was *ultra vires* the Parliament of Northern Ireland on the ground that it interfered with trade with a place outside Northern Ireland, in contravention of s. 4 (7) of the Government of Ireland Act, 1920. Thus the decision of the Recorder involved the decision of a question as to the validity of the Act—that is, a constitutional question—and under the Government of Ireland Act an appeal lay, first to the Northern Ireland Court of Appeal, and thence (with the leave of that court or of the House of Lords) to the House of Lords.

The Court of Appeal unanimously held that the object of the Milk Act was the regulation of the supply of milk for human consumption in Northern Ireland and that the Act did not contravene the provisions of the Government of Ireland Act as to trade and was within the competence of the Northern Ireland Parliament. The appellant obtained leave from the House of Lords to appeal to that House. The House (Lords Atkin, Thankerton, Macmillan, Wright and Maugham) unanimously dismissed the appeal.

As the case progressed through its various stages, the likelihood increased that it would eventually be decided by reference to some of the principles laid down in that *catena* of judgments in which the Judicial Committee of the Privy Council has interpreted the written constitutions of the Empire, especially Canada and Australia. *Macleod* v. *Attorney-General for New South Wales* [1891] A.C. 455, was referred to in one of the judgments in the mandamus proceedings. In the decision of the Court of Appeal in *Gallagher* v. *Lynn* the court acknowledged the help which it had received from Privy Council cases cited at the Bar, mentioning especially the Australian case of *James* v. *Cowan* [1932] A.C. 542.

When the House of Lords was reached, it might almost be said that the legal atmosphere was that of the Privy Council. This is not surprising, seeing that the powers of the Legislature of Northern Ireland are conferred and restricted in statutory language very similar to that which had been used in the statutes previously passed as respects other parts of the Empire and interpreted by the Council. Moreover, the noble and learned lords who formed the House to hear this appeal from Northern Ireland constantly sit at the Council Board to advise His Majesty upon appeals from overseas. It was assumed, almost without argument, that the principles evolved by the Privy Council would lend themselves for the interpretation of the Government of Ireland Act, 1920. This is clear from the speech of Lord Atkin (in which the other lords concurred):—

> "It is said that the provisions of the Milk Act interfere with—indeed, put an end to—the trade in milk between the farmers of Donegal and customers in Derry, and that therefore they offend against the express limitations imposed by s. 4 (7). My lords, the short answer to this is that the Milk Act is not a law 'in respect of' trade, but a law for the peace, order and good government of Northern Ireland 'in respect of' precautions taken to secure the health of the inhabitants of Northern Ireland by protecting them from the dangers of an unregulated supply of milk.
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> "These questions affecting limitation on the legislative powers of subordinate Parliaments or the distribution of powers between Parliaments in a federal system are now familiar, and I do not propose to cite the whole range of authority which has largely arisen in discussion of the powers of Canadian Parliaments. It is well established that the 'true nature and character of the legislation' is to be looked at . . . 'the pith and substance of the legislation.' If, on the view of the statute as a whole, it is found that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not, under the guise of dealing with one matter, in fact encroach on the forbidden field. . . . In the present case any suggestion of an indirect attack on trade is disclaimed by the appellant. There could be no foundation for it. The true nature and character of the Act, its pith and substance, is that it is an Act to protect the health of the inhabitants of Northern Ireland. In those circumstances, though it may incidentally affect trade with County Donegal, it is not passed 'in respect of' trade, and is therefore not subject to attack on that ground."

In these constitutional cases, therefore, it seems that the rule in "Shylock's Case" does not apply. It is not possible to say:—

> "This bond doth give thee here no jot of blood;
> The words expressly are, a pound of flesh;
> Then take thy bond, take thou thy pound of flesh;
> But, in the cutting it, if thou dost shed
> One drop of Christian blood, thy lands and goods
> Are, by the laws of Venice, confiscate . . ."

If the taking of a pound of flesh be authorised, it will not be invalidated by the inevitable consequences of the taking. This is bound to be so. The life of a community does not proceed according to constitutional categories. Nor do its manifold activities lend themselves to classification under precise heads of subject-matter. Thus there has been worked out, in the Privy Council, the distinction between the "pith and substance" of an enactment and its incidental effect—between the casting of a stone into the pond and the expanding circles on the surface of the water.

Costs.

REGISTERED LAND—*continued.*

We dealt briefly in our last article with the provisions of the Solicitors' Remuneration (Registered Land) Order, 1925.

It will be remembered that the Order sets out a scale of remuneration in respect of transactions affecting registered land, but the scale does not apply to transactions relating to the land before it is registered, nor to the work in connection with the actual registration of the land, the solicitors' remuneration in respect of this work being based on item charges.

Even in respect of the work to which the scale applies the solicitor may elect, before undertaking the business, to be remunerated on the basis of item charges, provided he gives notice of his election in writing: see r. 1 (*m*) of the 1925 Order. This rule corresponds to r. 6 of the General Order, 1882.

Similarly, there is a counterpart, or something in the nature of a counterpart, of r. 3 of the rules applicable to Sched. I, Pt. 1, of the Order of 1882, for r. 1 (*k*) of the 1925 Order provides that where the solicitor is concerned for the proprietor of the land and also for a person taking a charge thereon, then he is to be entitled to the charges of the solicitor for the person taking the charge, and one-half of those that would be allowed to the proprietor's solicitor up to £5,000, and on any excess above £5,000, one-quarter.

This rule is somewhat differently worded from r. 3, *supra*, for it does not definitely say that it applies only to a case where the solicitor is acting for both the mortgagor and the mortgagee. In fact it would seem to apply in a case where the same solicitor is acting for both the purchaser of the land, who is mortgaging the property, and also for the mortgagee: a position which is provided for, in the case of unregistered land, by r. 6 of the rules applicable to Sched. I, Pt. 1, of the General Order of 1882. The rule thus appears to reverse the position created by rr. 3 and 6 (*supra*), for, presumably, it is intended that where the same solicitor acts for the purchaser of the registered land and also for the mortgagee, he is only to charge one-half of the remuneration on the purchase and the full scale fee in respect of the mortgage; whereas in a purchase and mortgage of unregistered land, where the same solicitor acts, r. 6 provides that he shall receive his full remuneration on the purchase and one-half of the remuneration in respect of the mortgage.

Moreover, it might well be contended that the use of the word "proprietor" in r. 1 (*k*) of the Remuneration Order of 1925 would entitle the solicitor to apply the rule to a case where he acts for the *vendor* as well as the mortgagee, even where the vendor and the mortgagee are one and the same person.

The remuneration prescribed by the Remuneration Order, 1925, is intended to cover all the work ordinarily arising in connection with the purchase and sale, or the transfer of a mortgage of registered land: see r. 1 (*h*) of the Order. It does not, however, include stamp duty, travelling expenses, hotel expenses, search fees, nor any other disbursement "reasonably and properly paid." In short, all disbursements, except stationers' charges, may be charged in addition to the scale remuneration.

The scale charge is intended to cover all the necessary work entailed by reason of the transaction, so that in addition to the work of preparing the necessary documents relating to the sale or transfer, cases for the opinion of counsel in connection with the title, and for settling any document required to perfect the sale or transfer, including the necessary attendances on counsel, and the preparation and completion of the agreement for sale, acknowledgments, etc., are also covered by the scale.

Under r. 4 of the rules applicable to Sched. I, Pt. I, of the Order of 1882, any extra work necessitated by a defect in the title is deemed to be covered by the scale, and the same would apparently apply in the case of registered land, although the likelihood of such extra work arising is rather more remote in the case of registered land than it is in the case of unregistered land. Presumably, however, such matters as consents by beneficiaries would be covered.

The scale of fees is simple and is easy to follow. Thus, for the first £1,000 of the value of the land or the amount of the charge, the fee is 15s. per cent., with a minimum of 30s.; for the second and third £1,000, 10s. per cent.; for the fourth and fifth £1,000, 5s. per cent.; for the sixth and each subsequent £1,000 up to £10,000, 4s. per cent., and for each subsequent £1,000 up to £100,000, 2s. per cent. Transactions in excess of £100,000 are to be charged as for £100,000. Similar to the scale under the Order of 1882, fractions of £100 under £50 are reckoned as £50, whilst fractions of £100 over £50 are reckoned as £100. The above scale is increased by 33⅓ per cent. in respect of transactions commenced after the 13th April, 1936, by virtue of the General Order of 1936.

It will be borne in mind that where the property is sold by auction, then the solicitor will be remunerated on the scale set out in the Order of 1882, so far as the auction is concerned, but his remuneration in respect of the transfer, if it is registered land, will be based on the above scale. Thus, assume that a solicitor sells a property by auction for £2,000, no auctioneer's fee being paid by the client, and that it is registered land, then his fees will be as follows:—

	£	s.	d.
Auction Scale, Sched. I, Part I, General Order, 1882	20	0	0
Transfer of Title, Registered Land Order, 1925	16	13	4
	£36	13	4

If this had been unregistered land, the scale remuneration in respect of the transfer of title would have been £33 6s. 8d., the registered land scale being precisely half of the scale in respect of unregistered land in this instance.

Company Law and Practice.

Another Case on Directors' Remuneration.

I propose to devote this week's article to a consideration of the recent case of *In re T. N. Farrer, Ltd.* [1937] 1 Ch. 352, which raised a number of interesting points as to the rights of a governing director appointed for life by the articles of a company which subsequently went into liquidation. The company was a private company and practically the whole of its issued share capital was held by the governing director, who had previously been the owner of a business the acquisition of which was the main object of the company. By the articles it was provided that the governing director should be governing director for life or until he should resign or be removed by a special resolution. He was also to have a salary of £300 a year and complete control of the company's affairs. He took office as provided by the articles and exercised the powers given to him and received his remuneration until it became apparent that the company had got into such a position financially as rendered

it impossible for it to carry on. It was thereupon decided that the company should be put into voluntary liquidation, and the necessary resolution was proposed and passed. The governing director voted in favour of the resolution—indeed, this was essential to its passing, since he controlled all the voting power in the company—and the learned judge at the hearing observed that this was the only honest course to take. At the date of the passing of the resolution the governing director was indebted to two persons in not inconsiderable sums, and in satisfaction of this debt he executed a deed whereby he assigned to his creditors a sum of £15,534 alleged to be owing to him by the company, together with all other moneys (if any) owing to him from the company. The assignees then sought to prove in the liquidation for (*inter alia*) a sum of money claimed as compensation due to the governing director for the loss of his office. The liquidators of the company rejected the proof, and the assignees took out a summons asking that this decision of the liquidators might be reversed and their proof allowed.

Simonds, J., dismissed the application with costs, and there were two separate and independent grounds for his decision. It was argued on behalf of the applicants—i.e., the assignees—that the liquidation operated as a dismissal of the governing director from the service of the company. He had, it is true, voted in favour of the winding-up resolution, but this he was in the circumstances bound to do, and it did not preclude him from claiming damages against the company. The amount of the damages should be calculated by the actuarial value of his life interest in £300 a year (the amount of his remuneration fixed by the articles) for breach of contract. This argument was based on *Fowler* v. *Commercial Timber Co., Ltd.* [1930] 2 K.B. 1, where it had been held by the Court of Appeal that on the passing of a resolution for the voluntary winding up of a company a managing director could claim damages for breach of an agreement to employ him for a fixed number of years at a certain salary, notwithstanding that the managing director had himself as a director voted in favour of the resolution. A contrary decision would, as was pointed out by Slesser, L.J., in the course of his judgment, "involve . . . that the plaintiff [i.e., the managing director] as director would be unable to give disinterested advice to the company on the question of going into voluntary liquidation." But there was this difference between the two cases. In *Fowler* v. *Commercial Timber Co., Ltd., supra*, the managing director's position was regulated by a special contract of employment with the company; in *In re T. N. Farrer, Ltd., supra*, the position of the governing director was regulated solely by the company's articles. It was argued in the latter case that the position of the governing director was exactly the same as that of the managing director in the earlier case, but this argument, as will be seen, did not find favour with the learned judge.

The arguments on the other side can be shortly summarised before we pass to the judgment. It was pointed out that if the present claim were allowed a governing director in the position of the governing director of the company in question could always secure for himself an income for life by the simple expedient of putting the company into liquidation. But a director's remuneration is limited to such time as he continues to perform his duties as a director, and after the commencement of the liquidation of the company these duties—and with them the remuneration—cease. There was no contract between the governing director and the company; the whole claim was based on the articles, which did not constitute a contract, but could only be evidence of a contract. The well-known case of *Eley* v. *Positive Government Security Life Assurance Co. Ltd.*, 1 Ex. D. 88, was cited. Furthermore, even on the assumption that there was a contract, and that there had been a breach of that contract, no damages could be recovered. It was provided by the articles that the governing director could be dismissed by a special resolution, and even though this might be unlikely, the fact remained that the contractual relationship between the parties could be put an end to by a stroke of the pen at any moment. It was impossible, therefore, to say that the governing director had suffered any damage when in fact his services were put an end to by the passing of the resolution for liquidation. Lastly, it was argued that in the case of services rendered under a contract implied by the articles, the terms of such service must always be subject to any incidents imposed by the articles. One of these incidents is the rule that a company can never prohibit itself from altering its articles with the result that an action for damages can never be founded on an alteration of articles. In the present case, it will be observed, all that was necessary for the removal of the governing director was the alteration of the company's articles, since there was no specific contract of service.

Simonds, J., arrived at the conclusion that the application should be dismissed by two different ways. After setting out the facts he pointed out that the only question which he was called upon to determine was whether the governing director was entitled in the liquidation to claim damages on the grounds of breach of his contract of service. In the first place it was clear that the terms of his employment were contained in the articles and in the articles alone. "I have no doubt that . . . having signed the memorandum and articles, and having assumed the office of governing director, and held it for some sixteen years, he must, in the absence of any evidence to the contrary, be regarded as holding office on the terms of the articles: see *In re Anglo-Austrian Printing and Publishing Union: Isaacs' Case* [1842] 2 Ch. 158." At this point, it is respectfully submitted, the whole case could have been disposed of on the authority of *Eley* v. *Positive Government Security Life Assurance Co. Ltd., supra*, and *Browne* v. *La Trinidad*, 37 Ch. D. 1, on the grounds that there was no contract binding on the company of the breach of which the governing director could complain. Assuming, however, that there was such a contract, the learned judge went on to examine the effect of the liquidation, and held that the result was to put an end to the contract, though whether this was done by the resolution alone or by the combined effect of the resolution and the subsequent action of the liquidators in dispensing with the services of the governing director he found it unnecessary to determine. The last question, therefore, was "such being the contract and such its termination has there been a breach of contract by the company, and, if so, what, if any, damages are recoverable? It is, in my opinion, necessary to distinguish a case like the present one in which the contract is constituted by the articles, and the governing director has assumed office in accordance with them, and a case where, apart altogether from the articles, the company and the director have entered into an independent agreement." In the latter case there may be a question on the construction of the agreement as to whether a term can be implied limiting its operation to the period of the company's active existence, so that on a winding up before the expiration of the period during which the services were to have been rendered no claim could arise against the company for breach of the agreement. "But where the terms of the contract are to be found only in the articles, it appears to me to be reasonably clear that a condition of the continued employment of the director must be the continued existence of the company. . . . On this ground alone—namely, that the employment of the governing director was limited to the active life of the company—I should uphold the decision of the liquidators and dismiss the application. I should, however, add that the same result may be reached by a consideration of the damages resulting from a breach of contract, if there were a breach, for if the terms of the contract are to be found in the articles, they must include the term that the governing director may be removed by special resolution of the Company and, I think,

also the term that his tenure of office must always be subject to the relevant articles themselves being altered under the statutory power." In effect, therefore, he could be dismissed at any moment, and it is not possible for a servant to recover damages on the termination of his employment if it was always open to his master to dismiss him at a moment's notice.

One word of warning before closing: The expressions "servant," "contract of service," etc., have been used in this article and they are appropriate to the circumstances. But a director is not, of course, a servant of the company properly so called, even if he is a governing or managing director (see per Kekewich, J., in *Normandy* v. *Ind Coope and Co. Ltd.* [1908] 1 Ch. 84, at p. 104).

A Conveyancer's Diary.

[CONTRIBUTED.]

Public Rights of Way.—I.

THERE has now appeared in the King's Bench reports for July ([1937] 2 K.B. 77) a report of *Merstham Manor Limited* v. *Coulsdon and Purley Urban District Council* which is the only case that I know of dealing with the Rights of Way Act, 1932. The case incidentally was tried as long ago as February, April and May, 1936.

The facts of the case are of no interest at all; but Hilbery, J., took the opportunity of reviewing the provisions of the Act and consequently some account of the Act, as now interpreted, may not be out of place.

Public rights of way arise most frequently, of course, under some exercise of statutory powers by local authorities. With this question the Act has nothing to do. They may also arise by express dedication, or by implied dedication. The latter doctrine is analogous to that of "lost modern grant" in connection with easements. There is also some ground for saying that a public right of way can arise by common law prescription, though doubts have been cast on the correctness of this supposition. In any case, it is of no practical importance. What does matter is that, prior to the coming into force (on New Year's Day 1934) of the Act of 1932, there was nothing which corresponded in the case of public rights of way to the Prescription Act, 1832.

The result was that in most cases of a disputed highway one was left, in the absence of express dedication or of a statute, to the doctrine of presumed dedication, about which an enormous mass of case law, of a rather technical variety, had grown up. It was to aid in presuming a dedication that the rather depressing procession of oldest inhabitants made its way to the law courts.

The Act of 1932 makes it possible for the court to hold that a public right of way exists without the assistance of witnesses past middle age. The substance of the Act appears in sub-ss. (1) and (2) of s. 1, which have distinct affinities with s. 2 of the Prescription Act, as well as some serious differences. They provide as follows:—

> "(1) Where a way, not being of such a character that user thereof by the public could not give rise at common law to any presumption of dedication, upon or over any land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, such way shall be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate such way, or unless during such period of 20 years there was not at any time any person in possession of such land capable of dedicating such way.
>
> "(2) Where any such way has been enjoyed as aforesaid for a full period of 40 years, such way shall be deemed conclusively to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate such way."

Certain of the things which have to be proved are the same in the case of both periods. First, one must prove actual enjoyment by the public, that is to say, by the public at large and not by any section of it, for the period. On this point Hilbery, J., quoted some remarks of Lindley, L.J., in *Hollins* v. *Verney* (13 Q.B.D. 304, 308), of which the most important is this: "The truth is that the question whether in any particular case a right of way has or has not been actually enjoyed for the full period of twenty years, appears to be left by the Act to be treated as a question of fact to be decided by a jury." Hilbery, J., was actually sitting without a jury, and there never would be a jury if the case came on, as it is most likely to do, in the Chancery Division. But the point is that the question is one of pure fact. Further, as Hilbery, J., said: "I take the word 'enjoyed' to mean, as Stirling, J., said in *Smith* v. *Baxter* [1900] 2 Ch. 138, 144, 'having had the amenity or advantage of using.'" As a matter of fact, Stirling, J., was himself quoting from an earlier case: the point of the remark in its original context is that a right may be "enjoyed" without a continuous physical exercise of it, so long as the "dominant owner" used it whenever he wished to.

Secondly, the enjoyment must have been "as of right." Again, the meaning is well enough known. The expression here corresponds to the words "(enjoyed) by any person claiming right thereto" in the Act of 1832, and must, as Hilbery, J., recognised, be interpreted on the same principles. The latter expression has always been taken to mean that the person exercising the right does so openly asserting that the right is a right. The user must be *nec vi, nec clam, nec precario*. I hardly think that many alleged public or private rights of way are successfully exercised "*vi*" for twenty years in present conditions. Such private easements as underground watercourses may well be exercised "*clam*," but I do not see how in the nature of things a highway can be so enjoyed. "*Precario*" remains. It is fatal to many claims under the Act of 1832, and will be of serious account in questions under that of a century later. To qualify, the user must not be permissive. Under the Prescription Act actual user for forty years is sufficient, even if it was *precario*, provided that the permission is oral. But there is no such provision in the Act of 1932.

Thirdly, the enjoyment must be "without interruption." These words occur also in the Prescription Act, but they are there subject to the qualification introduced by s. 4, whereby nothing is to be deemed an interruption unless the party interrupted shall have submitted to or acquiesced in it for a year. The consequence is that under the Prescription Act actual user for nineteen years and one day is sufficient; for when that period has run there is no time for an actual interruption to ripen into an interruption within the meaning of the Act. But there is no such provision in the Rights of Way Act, and we are consequently left to the ordinary meaning of the word. As interpreted by Hilbery, J. (at p. 85), "without interruption" is to be taken as meaning without actual and physical stopping of the enjoyment, and not that the enjoyment has been free of any acts which merely challenged the public right to that enjoyment. The learned judge instanced the habit of the Inns of Court to close their gates to the public on at least one day in the year as being a good example of the sort of interruption meant. It would appear, however, that the Inns err on the side of caution. One closing in any twenty years seems to be enough.

At this point the rules applicable to the twenty-and forty-year periods diverge. Once one has proved all the above facts for the forty-year period, the way is conclusively deemed to have been dedicated as a highway unless "there is sufficient evidence that there was no intention during that period to

dedicate such way." The presumption can be rebutted in that one mode and that alone. The forty-year period in the Rights of Way Act has nothing whatever in common with the forty-year period in the Prescription Act. In the latter, on proof of forty years' enjoyment, the way is to be deemed absolute and indefeasible unless it can be shown to have been enjoyed by virtue of a consent contained in a deed or put into writing. Other sections of the Rights of Way Act deal with what is " sufficient evidence " of the absence of intention to dedicate, and I accordingly deal with this point below.

Where, however, the enjoyment proved is only for twenty years, there are two modes of rebutting the presumption. One can either show that there was no intention to dedicate, as with the longer period, or one can show that during the period there was " not at any time any person in possession of such land capable of dedicating such way." Now, for all practical purposes, no one is capable of dedicating highways in general, save an absolute owner in possession, though a tenant for life has also power to dedicate ways in certain restricted circumstances by virtue of the Settled Land Acts (Act of 1925, s. 56, and Act of 1882, s. 16, as retrospectively amended by para. 3 of Sched. IV of the Act of 1925). What has to be proved to rebut the presumption arising from enjoyment of a public way for twenty years is that throughout that period there was never a beneficial owner in fee simple in possession, or, if the way is within the Settled Land Act classes, that there was never in possession a tenant for life or person having the powers of a tenant for life. As a matter of fact, the result of the legislation of 1925 is that there is always either a beneficial owner or a person having the life tenant powers, though such person is not necessarily in possession. Consequently, if the way is within the Settled Land Act classes, the presumption arising from its user by the public for twenty years can never be rebutted if the person with the fee is in possession. In other cases, moreover, a single moment during the twenty years at which there was a beneficial owner in possession will put the attempt at rebuttal out of court. On the other hand, the person capable of dedicating must be in possession. Consequently, if the land is in lease during the twenty years, the presumption can be rebutted easily enough.

On this point two things require to be said: First, there is nothing in the Rights of Way Act to correspond to s. 7 of the Prescription Act, which stops time running while a person not *sui juris* is in possession, nor to s. 8, which gives an extended period where the land is in the possession of a tenant for life or a lessee. And secondly, there is nothing whatever in regard to the forty-year period to guard the interests of persons not capable of dedicating, or of reversioners, so far as s. 1 (2) is concerned. What is done for such persons will appear later.

Landlord and Tenant Notebook.

The Meaning of "Vacant Possession."

According to the *Termes de la Ley*, " possession is said two waies, either actuall possession, or possession in law." The ambiguity has led to a vast amount of trouble, and has necessitated the use of such expressions as " actual possession," " walking possession," " vacant possession."

" Vacant possession " is an expression which figures largely in the vocabularies of estate agents, particularly during times of housing shortage. Frequently it merely emphasises the nature of the bargain offered, for, even before the abolition of the doctrine of *interesee termini*, an agreement for a lease was held to oblige the landlord to let the tenant into possession, *e.g.*, in *Cox* v. *Clay* (1829), 5 Bing. 441, and again in *Jinks* v. *Edwards* (1856), 11 Ex. 775.

Curiously enough, no reported case appears to illustrate the precise meaning of the words for this purpose. In the former of the cases mentioned an ex-tenant was found to be in undoubted occupation; in the latter the defendants themselves refused to give possession. Consequently, while it is easy to imagine cases in which occupiers move themselves and their goods by instalments, we have no authority on the position of the border-line for these purposes.

If the landlord impliedly undertakes to give possession when the term commences, the tenant is under a corresponding obligation to deliver up possession at its termination. One of the earliest cases on this point was *Harding* v. *Crethorn* (1793), 1 Esp. 57, when the ex-tenant unsuccessfully pleaded that the plaintiff had witnessed a document addressed by him to a sub-tenant, which was not only a notice to quit but a direction to pay rent to the plaintiff; it was held that this did not establish acquiescence, as a witness to a signature need have no knowledge of the contents of what is subscribed.

The obligation may be considered less stringent, in one respect, than that imposed upon an intending landlord. For when a tenant has lawfully sub-let to a sub-tenant who holds over by virtue of the Rent, etc., Restrictions Acts, damages cannot be recovered for failure to deliver up: *Reynolds* v. *Bannerman* [1922] 1 K.B. 719.

In these cases, too, reports appear to deal only with complaints of personal occupation by the ex-tenant or by some third party, and not of any failure to clear the premises of goods.

The meaning of " vacant possession " again assumes importance if and when a writ of summons in an action to recover land (High Court), or an action for the recovery of land (County Court), has to be served and the defendant cannot be found.

Here it should be noted that some text-books, unfortunately, show a tendency to state what was the law rather than what it is, apart from the fact that the Rules of the Supreme Court stipulate for two conditions, while the County Court Rules now stipulate for *one of* two conditions before service may be effected on the premises only (" by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property " in the one case, " by affixing the summons on a conspicuous part of the property " in the other case). There is a further condition: " when it cannot otherwise be effected " in R.S.C., Ord. 9, r. 9; but the new C.C.R., Ord. VIII, r. 24, says " in the case of vacant possession, *or* inability to serve in any other manner."

Thus, what constitutes vacant possession is always important when a plaintiff in a High Court action desires to avail himself of the concession, and may be important if the proceedings are taken in a county court.

For some reason or other, there is a tendency among text-book writers to make much of *Savage* v. *Dent* (1737), 2 Stra. 1064. That was a case in which a tenant of a public-house had left the premises, taking his family and most of his belongings with him. But it was held that because a quantity of beer was found in the cellar, there was no " vacant possession." While a year later, in *Doe d. Burrows* v. *Roe* (1838), 7 Dowl. 326, when it appeared that a lease of five houses had expired on the 29th October, and service was effected on three of them, described in the affidavit as "deserted, unoccupied and shut up " on the 30th October, it was held that enquiries had been insufficient, for tenants might have been in possession a week earlier.

The latter authority might still hold good in the case of a High Court writ, when it must be shown that service cannot otherwise be effected; but the bicentenary of *Savage* v. *Dent* can best be celebrated by erasing it from the list of leading cases. It is not consistent, for one thing, with *Isaacs* v. *Dent* [1880] W.N. 75, C.A., a case (which might well have been more fully reported) in which the court refused to set aside a judgment signed after service effected on a house

not actually occupied, but used by a doctor, who called there for letters and had some furniture there; and a resolution of the Masters of the King's Bench Division of the 5th June, 1916, was to the effect that the leaving of a few articles of furniture or other goods did not prevent property from being vacant.

Lastly, there is the possession to be given by the officers of the law executing a judgment for the recovery of land or premises. Here again there is some difference between the practice of the High Court and that of the county courts. R.S.C., Ord. XLVII, r. 1, is an instance of legislation by reference; and what is referred to is to be found largely in the old common law. The judgment or order "may be enforced by writ of possession in manner before the 1st November, 1875, used in actions of ejectment in the Superior Courts of Common Law." This, according to the authority of Anderson's "Treatise on the Law of Execution," obliges the sheriff to remove not only persons but goods; but of the two cases cited in the footnote, *Rowley* v. *Hassard* (1700), 2 Lutw. 1483, alone seems pertinent. In that case it was held that a defence to an action brought against the executing party, which did not state where the goods had been taken to, was insufficient. I mention the point because the "Yearly Practice of the Supreme Court" refers us to "Anderson." But in the case of county court executions, s. 21 of the amending Act of 1919 expressly declared that for the purpose of executing a warrant to give possession of any premises, it should not be necessary to remove any goods or chattels from those premises; and this provision is repeated in the County Courts Act, 1934, s. 120, now in force. I believe that the 1919 reform was the outcome of two prosecutions in London, in one of which a police court acquitted and in the other of which another police court convicted a bailiff of causing an obstruction by placing furniture on the highway. At all events, it simplifies the tasks of bailiffs, apart from such considerations; for a savage and ill-informed dog is a chattel, and officers of county courts, unlike sheriffs, have no power to raise the *posse comitatus*.

Practice Notes.

SUMMARY PROCEDURE (DOMESTIC PROCEEDINGS) ACT, 1937.

THIS Act comes into force on 1st October. Based upon the report of the Departmental Committee on Police Court Social Services (1936, 80 SOL. J. 253), its progress has been noted in these columns (81 SOL. J. 126, 365 and 466).

"Domestic proceedings," i.e., those relating to matrimony and the guardianship of infants, will be subject in their hearing, determination and reporting to a special procedure. Proceedings to enforce an order, or to vary an order for payment under the Guardianship of Infants Acts, 1886 and 1925, and Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, are excluded.

First, the court must not contain more than *three justices* of the peace, and should, as far as possible, include a man and a woman (s. 1). But a stipendiary magistrate in the provinces, or a metropolitan police magistrate in London may sit alone to hear such cases (s. 9 (6)). The general provision does not apply to the City of London or the metropolitan police area (s. 9 (1)). For the City of London it will be the duty of the Court of the Lord Mayor and Aldermen to set up courts for the hearing of domestic proceedings (s. 9 (2)). As regards any part of the metropolitan police court area, courts may be set up by Order in Council to hear any class of domestic proceedings (s. 9 (3)).

Secondly come special rules relating to *the sittings* of domestic courts. Domestic proceedings must be heard and determined separately from other business "so far as is consistent with the due dispatch of business" (s. 2 (1)). *Five classes of persons* only may be present: (*a*) members and officers of the court; (*b*) parties, their solicitors and counsel, witnesses and other persons directly concerned, and other persons whom either party desires to be present; (*c*) solicitors and counsel waiting for other cases; (*d*) representatives of newspapers or news agencies; (*e*) any other person with the court's permission, this not to be withheld if a person appears to have "adequate grounds for attendance" (s. 2 (2)). The court may be cleared while evidence of "*an indecent character*" is being taken, if this course is "necessary in the interests of the administration of justice or of public decency." This rule applies to all persons except members or officers of the court, the parties, their solicitors or counsel and other persons directly concerned (s. 2 (3)). If A and B are parties to domestic proceedings and, at the same time, to proceedings to enforce a domestic order or to vary an order for payment in a domestic matter, the whole proceedings (unless the court rules otherwise), from the point of view of title to be present and exclusion during indecent evidence, will be regarded as domestic proceedings (s. 2 (4)). The power to exclude persons during the whole or any part of domestic proceedings is additional to the other powers of the court to hear cases in camera (s. 2 (5); see Stone, "Justices' Manual," (1937) 69th ed., at p. 180). Moreover, even a person who, as witness, is entitled to be present may be excluded from court until he is "called" (s. 2 (6)) on the application of either party (see Roscoe, "Criminal Evidence," (1928) 15th ed., p. 158; Stone, op. cit., p. 183).

Thirdly, *reports* of domestic proceedings in newspapers or periodicals are drastically restricted: *four particulars only* may be published; (*a*) names, addresses and occupations of parties and witnesses; (*b*) grounds of application, and "a concise statement" of charges, defences and counter-charges, but only those "in support of which evidence has been given"; (*c*) legal submissions and the court's ruling; (*d*) the court's decision and its observations, but only those made "in giving its decision" (s. 3 (1)).

The penalty for a breach of these provisions may be four months' imprisonment and/or a fine up to £100 (s. 3 (2)), but no prosecution may be begun without the Attorney-General's consent (s. 3 (3)). The section does not apply to legal or medical periodicals (s. 3 (4)).

Lastly, the Act makes *four changes in the procedure* of certain classes of domestic proceedings.

1. In *matrimonial cases*, the court or a justice of the peace may have decided to request a probation officer or another person to attempt to reconcile the parties—"to effect conciliation," it is called. The *religious persuasion of the parties* must be considered. If the probation officer is called in, and the parties are of the same religion, a probation officer of that religion must be selected, if such an officer is available (s. 8).

2. If the attempt to conciliate has failed, and the probation officer thinks fit, he may furnish to the court "*statements of allegations*" in a form to be prescribed by rules made by the Lord Chancellor. The statements will contain the allegations made by each party and such other information as the rules may prescribe. No allegations must be included without the written consent of the party making the allegations (s. 4 (1)). Copies must be delivered or posted to the parties (s. 4 (2)). The statements are not evidence; the court may use them in its discretion for the purpose of questioning a witness (s. 4 (3)).

3. In domestic cases where an order may be made for a periodical payment, or where it is sought to enforce or vary such an order, or in bastardy proceedings, and the probation officer has been requested *to investigate the means of the parties*, the court may direct him *to report the result*, but, before doing so, the court must first determine all the issues (s. 5 (1)). His report may be given, at the court's discretion, orally or

in writing, which must be read aloud in the presence of such of the parties as are present (s. 5 (2)). Thereupon, the court must ask each party whether he objects to any statement therein; if so, the probation officer must give evidence on oath (s. 5 (3)). The court has power to receive as evidence any part of his written or oral report, or any statement made by him on oath in answer to a party's objection (s. 5 (4)). Acts done by a probation officer under this statute are regarded as part of his duties under Pt. I of Criminal Justice Act, 1925 (s. 7).

4. Finally, the court itself has *a duty to examine witnesses*, where any party is not legally represented *and* appears "incapable effectively to examine or cross-examine a witness." First it must be ascertained from the party to what matters the witness may speak or on what matters he ought to be cross-examined. This done, the court must question or cause him to be questioned. What questions are proper to be put in the interests of that party is a matter for the court itself to decide. The privilege applies not only to domestic and bastardy proceedings, but also to proceedings to enforce or vary a domestic order (s. 6).

Our County Court Letter.

THE RESTRICTIVE COVENANTS OF TYPISTS.

In a recent case at Manchester County Court (*Bennas* v. *Reeves*), the claim was for £3 10s. as money due under an agreement. The plaintiff traded as the Office Service Bureau, which was an employment bureau for training women secretaries, and also for finding them subsequent employment as often as necessary. The plaintiff had agreements with numerous typists, and one clause provided that no employee should, without the plaintiff's consent, either while in her employ or for three years afterwards or until the termination of the agreement, seek or accept employment with a client of the bureau to whom she might have been introduced or sent or with any person or firm whose name was supplied by such client or with any client whose name she might discover while in the employ of the bureau. This was prevented from being too wide and void by reason of another clause, which required to be read in conjunction, and provided that, if an employee broke the above clause, she should pay on breach: (*a*) if she took a permanent post with a client a sum equal to two weeks' salary, (*b*) if she took a temporary post, the sum of 20s. for each week or part of a week during which the employment continued. The plaintiff's case was that she obtained for the defendant employment with a certain firm, whom she served for two or three weeks. Subsequently, the firm applied to the dictaphone company for an operator. As the defendant was qualified, that company sent her to the same firm to which she had been previously sent by the plaintiff. The plaintiff accordingly claimed £3 10s., being two weeks' salary as agreed, but the defendant contended that the agreement was too wide for the plaintiff's protection and was, therefore, void. Alternatively, notice terminating the agreement had been given before entering the employment. His Honour Judge Leigh held that the latter defence was unsound, as it was almost equivalent to cancelling an instalment agreement and refusing to pay for the goods already delivered. On the major issue, however, the agreement was too wide, and judgment was therefore given for the defendant, with costs.

EXCHANGE OF CARS.

In *Bowman* v. *Bacon and Wife*, recently heard at Cambridge County Court, the claim was for £85 4s. 11d., as the price of a motor car and for goods sold and work done. The plaintiff's case was that in July, 1935, he supplied to the defendants jointly a Citroen car for £353 18s. 2d. on the hire-purchase system. The Citroen was soon afterwards exchanged for a Studebaker, the price of which was £371, and the defendants were informed that an extra £17 1s. 10d. would be payable, also that they could only be allowed the second-hand price realised on the re-sale of the Citroen, viz., £300, which left them indebted in the further sum of £53 18s. 2d. There were also items of £3 11s. 6d. for licensing the Studebaker and £10 13s. 5d. for work done. An account for £74 11s. 6d. was sent to the defendants in January, 1936, when the first defendant offered payment by instalments. The second defendant had entered into both hire-purchase agreements, and had signed cheques for instalments. The defendants' case was that the allowance for the Citroen was not to depend upon what it was sold for, and the cars were to be exchanged on equal terms, i.e., with no further liability on the defendants, as the Studebaker was second-hand. His Honour Judge Farrant gave judgment for the plaintiff with costs.

THE DEFINITION OF AN AGRICULTURAL HOLDING.

In *Wathes* v. *Jones*, recently heard at Tamworth County Court, the claim was for possession of Crow Hall and double the yearly value from the 25th March, 1937, to the 15th July. The plaintiff's case was that in 1925 he bought Crow Hall and 27½ acres of pasture land, which the plaintiff had previously occupied for his cattle. The occupier of Crow Hall remained there (paying £20 a year rent) until her death in 1935, when the plaintiff, having renovated the house at a cost of £150, let it for £30 a year to the defendant. The latter was allowed to run his fowl in the fields adjoining the house, and also to store grain and mix poultry food in a barn and a shed. Expert evidence was given by an auctioneer that £30 a year was a reasonable rent for the house only. If the farm were included in the letting, an additional rent of £2 an acre would be reasonable. The plaintiff paid the Schedule B income tax on the land and maintained the hedges. The defendant's case was that the land was let to him as an agricultural holding and the whole 27½ acres were farmed by him. The plaintiff's only right was to graze his cattle after the poultry, and the defendant, having had vacant possession, was entitled to twelve months' notice (instead of six as given) as the premises were always known as Crow Hall Farm. His Honour Deputy Judge Burne held that the defendant only occupied the land by arrangement and to the extent of running his poultry on it. Judgment was given for possession on the 29th September, and for mesne profits at the rate of £30 a year, with costs on Scale B.

Obituary.

Sir PLUNKET BARTON.

The Right. Hon. Sir Plunket Barton, Bt., died in London on Saturday, 11th September, at the age of eighty-three. He was educated at Harrow and Corpus Christi College, Oxford, and was called to the Bar by Gray's Inn in 1893. He had previously been called to the Irish Bar in 1880, and had taken silk in 1889. He became a Bencher of King's Inns in 1891, and of Gray's Inn in 1899. In 1893 he was elected Conservative Member of Parliament for Mid Armagh, and he sat for that constituency until 1900. He became Solicitor-General for Ireland in 1898, and two years later he was raised to the Bench. He was a Judge of the King's Bench Division from 1900 to 1904, and of the Chancery Division from 1904 until his retirement in 1918.

Mr. G. R. HELMORE.

Mr. George Reginald Helmore, O.B.E., barrister-at-law, of King's Bench Walk, Temple, died on Sunday, 12th September. Mr. Helmore was called to the Bar by Gray's Inn in 1897.

MR. H. P. BODKIN.

Mr. Herbert Peter Bodkin, solicitor, senior partner in the firm of Messrs. Scadding & Bodkin, of Endsleigh Street, W.C., died on Wednesday, 15th September, from injuries received in a motor-car accident last April. Mr. Bodkin, who was admitted a solicitor in 1881, was Clerk to the Justices of Finsbury and Holborn.

MR. R. HUDSON.

Mr. Richard Hudson, solicitor, senior partner in the firm of Messrs. Brown, Hudson & Hudson, Barton-on-Humber, died on Tuesday, 7th September, at the age of eighty-two. Mr. Hudson was admitted a solicitor in 1888. He first sat as Deputy-Registrar of Barton County Court in 1889, and was appointed Registrar in 1896, holding that office until 1934. For many years he was joint Clerk to the Justices, and he was appointed Clerk to the Justices in 1900. He resigned that appointment on 30th June this year.

MR. S. LITHGOW.

Mr. Samuel Lithgow, C.B.E., J.P., solicitor, a member of the firm of Messrs. Lithgow & Pepper, of Wimpole Street, W., died in a nursing home at Norwich on Thursday, 9th September, at the age of seventy-seven. He was admitted a solicitor in 1882. Mr. Lithgow represented West St. Pancras on the London County Council from 1910 to 1913. He was a J.P. for the County of London, and was made a C.B.E. in 1928. In 1891 he founded the Stanhope Institute for Working Men and Women.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Intestacy—The Widow's £1,000.

Sir,—Referring to Mr. John Burder's letter in your issue of the 11th instant, may I refer Mr. Burder and your contributor to the case of *Re Brodie*, in the King's Bench Division, on 17th and 18th January, 1933, which appears to me in point, although not a decision on the particular question raised. I have not before me the actual reference to the *Brodie Case*, but enclose a short summary which clearly supports your contributor's view.

Manchester. T. C. YOUNGHOUSE.
11th September.

[We are grateful to Mr. Younghouse for his letter. The case he mentions, *Brodie* v. *Inland Revenue Commissioners*, is reported in (1933), 17 Tax Cas. 432, and in Vol. 18 of *Rating and Income Tax*, at p. 95.—ED., *Sol. J.*]

Restrictive Covenants.

Sir,—We were very interested to read the "Conveyancer's Diary" on page 694 in THE SOLICITORS' JOURNAL, dated the 28th August. The case of *Re Ballard* certainly has an important effect on the enforcement of restrictive and other covenants, and in view of this, and other recent decisions concerning this matter, we shall be greatly indebted if your contributor could inform us, either through your Journal or otherwise, of the best method of drafting a clause relating to the observance of restrictive and other covenants in connection with the sale of land on fairly large building estates.

In this connection it is necessary to protect not only the estate owner and his successors and assigns, but also the purchasers from builders on the estate, to whom the land was originally conveyed. It would be interesting to consider the effect of *Re Ballard* with the old case of *Elliston* v. *Reacher*.

Incidentally, should not the word "covenantee" on the third line of the fourth paragraph of the article above referred to be "covenantor."

Old Hill, THOMAS COOKSEY & Co.
Staffordshire.
4th September.

[A copy of this letter was sent to the contributor of the article referred to, and he has replied as follows:—

I am afraid I must plead guilty to the error in proof correction mentioned by the writer of the letter: "covenantee" should be "covenantor" in the place referred to.

I hope that I have rightly understood the problem put to me as being how to draw the operative words of restrictive covenants where an estate owner sells a large estate to a builder, and the builder resells in lots in such a way as to amount to a "building scheme."

The original estate owner will wish to impose restrictions on the entirety of the building estate. Such restrictions must, of course, be imposed for the benefit of land retained by him; they cannot be "in gross." Since the decision in *Re Ballard* the draftsman must carefully abstain from limiting them to enure for the benefit of all the estate owner's property in the neighbourhood, lest he suffer the fate of the plaintiff in *Zetland* v. *Driver*. It would, I think, probably be safe to attach the benefit to the "adjoining" or "adjacent" property of the vendor. But, personally, I should strongly recommend, wherever it is at all practicable, that the plan on the conveyance should mark off in, say, green, property of the vendor sufficiently near to the land sold for the observation of the restrictions clearly to benefit it. The operative words would then be: "The purchaser for himself his heirs and assigns owner or owners for the time being of the property hereby conveyed covenants with the vendor and his successors in title, owner or owners for the time being of the land coloured green on the plan drawn in the margin of these presents or any part or parts thereof to the intent that such covenant shall run with the land and enure for the benefit of the said land coloured green and every part thereof to observe the stipulations contained in the Schedule hereto."

When the builders come to part with the plots they will, I assume, wish to create a "building scheme," and will observe the rules in *Elliston* v. *Reacher*. Pending a decision on the application of *Re Ballard* to cases of this sort, it would, I think, be safest, where the area is large, to carve it up into several small self-contained areas affected by identical "building schemes." Within each of such areas every plot-owner would, if the *Elliston* v. *Reacher* rules are observed, be able to enforce the covenants. It would be possible, if the area were kept large, to say that any one plot was so far away from some others as to be incapable of benefiting from the observance of the covenants imposed upon them and that, therefore, under *Re Ballard*, all the covenants are bad. I think that if one were called upon to argue such a case one would be able to contend with some force that such an argument was faulty. For, since the "building scheme" is a system of mutual covenants, each plot-owner must be taken to have made, in an omnibus form of words, a large number of several covenants with everyone else on the estate, and there is no reason to say that his covenant with his immediate neighbour, Mr. A., is bad merely because he has also entered into an identical covenant with Mr. B., who lives a mile away on the other side of the estate. The position is not the same as where there is a single covenant with a single large owner. I should, therefore, submit that though Mr. B. could not sue, Mr. A. is not prejudiced by that fact. I should also seek to suggest that the very fact that the whole area is embraced within a "building scheme," validly constituted in accordance with *Elliston* v. *Reacher*, is a strong indication that, however large the area may be, it is sufficiently small for every part of it to be affected by anything done on any part of it. If one lives in such an area one could say

plausibly that if a slaughter-house is put up in a street a mile away that has always been known as part of the planned area, the value of one's house is depreciated, though one can neither see nor smell the offensive structure and trade. For these reasons I hope that it may be possible to secure decisions in favour of the validity of "building schemes" in spite of *Re Ballard*, and once any such decision is given the draftsman can go on his old way with confidence. Till there is such a decision, however, I think it would be rash to bank upon the above arguments being right, and I therefore suggest, as stated above, that the area should be kept small, and if it is large, should be cut up into a number of small areas. Within the small areas the covenants should be taken exactly in the form already in use.—ED., *Sol. J.*]

A Stamp Collector's Request.

Sir,—I am a retired solicitor in my eighty-fifth year. I live alone, am unable to walk and have nothing to do, but I have been a stamp collector on and off for seventy years and still find occupation and pleasure in handling stamps. May I, through the medium of your journal, appeal to my professional brothers to send me any foreign stamps they have no use for. I shall consider it a very kind and generous action and will help me to spend my last few days on earth pleasantly.

1, Brook Street, Hastings. 1st September. BERNARD W. KING.

Reviews.

The Matrimonial Causes Act, 1937, *with the Summary Procedure (Domestic Proceedings) Act*, 1937. By S. SEUFFERT, Barrister-at-law. 1937. Demy 8vo. pp. xvi and (with Index) 88. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Ltd. 5s. net.

Practitioners will welcome the early appearance of this book, which sets out and deals in a brief but informative manner with the new law contained in the Matrimonial Causes Act, 1937, and the Summary Procedure (Domestic Proceedings) Act, 1937. The close connection between the new statutes in certain phases of their operation, independent as they were in inception and in their passage through Parliament, amply justifies their treatment in a single volume. A short introduction enables the reader to gain at a glance some idea of the legislative changes which have been effected and the annotations, necessarily brief at this early stage, are helpful. Appendices set out relevant portions of earlier statutes, notably Pt. VIII of the Supreme Court of Judicature (Consolidation) Act, 1925—this is, of course, "the principal Act" in relation to the Matrimonial Causes Act, and without it much of the latter, particularly s. 10, relating to alimony, would be unintelligible—and the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 and 1925, which are of importance with reference to the Summary Procedure (Domestic Proceedings) Act. There is a good index.

Books Received.

The Law relating to Public Health and the Public Health Acts. By ALFRED R. LLEWELLIN-TAYLOUR, M.A., F.R.S.A., of Lincoln's Inn, Barrister-at-Law. 1937. Demy 8vo. pp. lxxxvii and (with Index) 653. London: Hadden, Best & Co., Ltd. Price 42s.

Law of Property in Land. By H. GIBSON RIVINGTON, M.A. Oxon, Solicitor. Second Edition, 1937. Demy 8vo. pp. xxiv and (with Index) 547. London: The "Law Notes" Publishing Offices. £1 1s. net.

The Colonial Legal Service List. Third Edition, 1937. London: H.M. Stationery Office. Price 9d. net.

To-day and Yesterday.

LEGAL CALENDAR.

13 SEPTEMBER.—Here is a little picture of eighteenth century London belonging to the 13th September, 1765: "An eminent tradesman in Aldersgate Street was summonsed before the sitting magistrate in order to show cause why he suffered his aged mother to languish in a workhouse and be a burthen to the parish when he was able to maintain her; when making but a trifling defence he was severely reprimanded and ordered to make a decent provision for her, agreeable to an old statute of the reign of Queen Elizabeth."

14 SEPTEMBER.—On the 14th September, 1767, Elizabeth Brownrigg was hanged at Tyburn for the murder of an unfortunate young girl who had been her apprentice. The cruelties to which she had subjected her and the indescribably horrible state to which her beatings had reduced her, shocked the whole of London. On the way to execution she was attended by two clergymen and appeared very penitent, but it is no wonder that the crowd pressing round the Chaplain's coach called out that they hoped he would pray for her damnation, crying that such a fiend ought not to be saved. Her body was dissected at Surgeons' Hall.

15 SEPTEMBER.—Immediately after the coronation of Richard I the great Ranulph de Glanville renounced his office of Chief Justician to go on the Crusade. On the 15th September, 1189, William de Mandeville, Earl of Albemarle, was appointed to succeed him, together with Hugh Pusar, the aged Bishop of Durham. His tenure of office was of the briefest, for, a month later, while visiting Normandy on the King's business, he died at Rouen. He was a gallant soldier and a faithful minister.

16 SEPTEMBER.—Thomas de Cantebrig flourished in the time when clerics still had a footing in the courts, especially the Exchequer. Just after the accession of Edward II he was appointed a Baron of the Exchequer on the 16th September, 1307, becoming in the following year deputy to the senior Baron. Till 1310 he continued to exercise judicial functions and then turned to diplomacy, being employed in various foreign negotiations.

17 SEPTEMBER.—Richard Newdigate, born on the 17th September, 1602, saw in his seventy-six years of life cataclysmic changes in England. At his birth, England was Elizabethan. He saw the coming of the Scottish kings, went through the only English revolution, and witnessed the rise and fall of our sole dictatorship. Having embraced a legal career, it was under Cromwell that he somewhat unwillingly accepted a place as Justice of the Upper Bench, but not to become subservient. Once he lost his place for a time "for not observing the Protector's pleasure in all his commands." Yet he became Chief Justice. A monarchist at heart, he took an active part in the Restoration.

18 SEPTEMBER.—On the 18th September, 1683, John Evelyn sadly notes in his Diary: "After dinner I walked to survey the sad demolition of Clarendon House, that costly and only sumptuous palace of the late Lord Chancellor Hyde, where I have often been so cheerful with him and sometimes so sad, happening to make him a visit but the day before he fled from the angry Parliament, accusing him of maladministration and being envious of his grandeur who from a private lawyer came to be father-in-law to the Duke of York." This great house, which had cost £50,000, stood in Piccadilly at the top of St. James' Street. Evelyn notes that it has been acquired by "certain rich bankers and mechanics" who "design a new town as it were and a most magnificent piazza" for the site.

19 SEPTEMBER.—On the 19th September, 1803, Robert Emmett, the young Irish patriot, was sentenced to death for his abortive and unsuccessful rising.

THE WEEK'S PERSONALITY.

Generations of Irishmen have found inspiration in Robert Emmett's speech from the dock on the eve of his execution. The romantic young visionary who, having taken part in the rising of 1798, had tried almost single-handed to rekindle from the quenched embers the revolutionary flame, has become an almost legendary hero. His youth, for he was only twenty-five, and that romantic attachment to Sarah Curran, the daughter of the great advocate, with whom he was secretly in love, have cast a glamour about his figure, and, but for a rash attempt to secure a last interview with her, he might have escaped. No one would have picked as the embodiment of a nation that small, wiry youth with his slightly pock-marked face and prominent nose, "simple in all his habits and with a look and manner indicating but little movement within." Yet, standing in the dock hurling eloquent defiance at England and receiving sentence of death, he attained an apotheosis. In the words of his biographer: "We seem to be holding in our hands a piece of white, very clear glass as we think of the character of Robert Emmett. There is no distortion in it; the pellucid devotion to one idea prevents the many-coloured play of mixed motives and early training. Those who in their youth have been wholly devoted to a cause or an ideal can see in young Emmett the boy that they once were, or at least hope that they once were."

AN OLD EXCUSE.

A man recently charged at the Kirkcudbright Sheriff Court with deserting his wife and leaving her chargeable to the county council pleaded that, when he had been married at the old blacksmith's shop at Gretna Green, he had been so drunk that he remembered nothing of the ceremony. But the court, refusing to credit this slur on the propriety of the proceedings there conducted, sent him to prison. His plea is oddly reminiscent of that by which Richard Leaver sought to escape a conviction for bigamy at the Old Bailey in 1737. "I know nothing about the wedding," he declared, "I was fuddled overnight and next morning I found myself abed with a strange woman, and, 'Who are you? How came you here?' says I. 'Oh, my dear,' says she, 'we were married last night at the Fleet.'" Perhaps the Kirkcudbright defendant had read some such tale as that or had heard of the doings at Gretna in the days when Burns on the Carlisle Road fell in with a girl who "after some overtures of gallantry on my side, sees me a little cut with the bottle and offers to take me for a Gretna Green affair."

IS IT A FIT?

At Cambridge County Court recently judgment went against a lady for the price of a tailor-made suit. Though, or perhaps because, she contended that the fit made her look ridiculous, she refused to don it for the court's inspection, even after the learned judge had offered her the use of his robing room to change. The visual test suggested recalls a tale from the Clerkenwell County Court, where a similar point was once being tried. The defendant had on the garment complained of and certainly her figure seemed to be bulging out of it. The judge observed that it seemed to be lacking in room. "She's got far more underclothes on than when I fitted her," shouted the dressmaker. The judge uneasily declared that he could not investigate matters of that sort, but the defendant cried: "It's a lie, your honour," and started to unbutton. "No, no, no," cried the judge. "Pinch her," cried the plaintiff, "you'll see I'm telling the truth." "I shall do nothing of the kind," retorted the judge, and then he noticed a respectable matron sitting in court. Her he begged to hold a private inquiry in the robing room and the verdict was eight vests, an excessive number even for a cold day. Judgment for the plaintiff.

Notes of Cases.

House of Lords.

Strood Estates Company, Ltd. *v.* Gregory.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright and Lord Maugham. 26th July, 1937.

LANDLORD AND TENANT—RENT RESTRICTION—"NET RENT"—CALCULATION—RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 (10 & 11 Geo. 5, c. 17), s. 12 (1) (*c*).

Appeal from a decision of the Court of Appeal ([1936] 2 K.B. 605; 80 SOL. J. 465).

The appellant company, as landlords, brought an action against the tenant of a certain cottage at a weekly rent of 8s. 6d., claiming £3 2s. 11d. as arrears of rent from September, 1935, to January, 1936. The defendant denied that he was in arrear with his rent, and claimed to be entitled to recover certain overpayments of rent. The landlords paid the rates of the premises. The question for decision was whether the rates as assessed, or the rates as compounded in accordance with s. 4 of the Poor Rate Assessment and Collection Act, 1869, and s. 211 of the Public Health Act, 1875, which compounding included certain deductions allowable to the landlords, should be deducted from the standard rent of the premises to ascertain the net rent under s. 12 (1) (*c*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920; or whether, in computing the "net rent," the appellants should deduct from the standard rent the amount actually paid by them in respect of rates, or there should be deducted the amount of rates with which the occupier of the dwelling-house would have been charged had he been rated directly. The Court of Appeal held that, on the true construction of s. 12 (1) (*c*) of the Act of 1920, the sum in respect of rates to be deducted from the "standard rent" in order to arrive at the "net rent" was the amount which would have been chargeable on the occupier of the dwelling-house had the rates been directly payable by him.

LORD MACMILLAN said that, as a result of the Acts of 1869 and 1875, the sum actually paid by the appellants in name of rates was 1s. 2¼d. a week. If the occupier had paid the rates the sum charged on him would have been 1s. 6¼d. a week. The statutory definition of "net rent" in s. 12 (1) (*c*) of the Act of 1920 was no doubt not very happily worded. But he agreed with the Court of Appeal that the "net rent" was to be "the standard rent less the amount of such rates," that was, less the amount of the rates chargeable on the occupier, or which would be chargeable on the occupier but for the provisions of any Act. The rates chargeable on the occupier were the full rates on the net annual value of the premises. Where the provisions of any Act placed the burden of the rates on the landlord and granted him corresponding concessions then the rates "which but for the provisions of any Act would be chargeable on the occupier" were again the full rates. Therefore in either case to arrive at the "net rent" the full rates chargeable on the occupier were to be deducted from the standard rent. But the appellants argued that the true antecedent of "such rates" was not "the rates chargeable on or which but for the provisions of any Act would be chargeable on the occupier," but the rates actually paid by the landlord, that was, the sums paid by him under abatement or on a diminished annual value, which were accepted from him by the local authority in discharge of his liability to pay the rates chargeable in respect of the premises. He (his lordship) could not accept that reading. When the definition spoke of the landlord as having paid the occupier's rates it did not mean that he had paid the actual sum which the occupier would have paid as rates, but that the landlord had paid in place of the occupier. The phrase was descriptive of the nature of the rates paid, not of the amount paid in discharge of them. Thus, when the definition spoke of "such rates" it did not

refer to the sums actually paid by the landlord but to the kind of rates in respect of which the landlord had paid, namely, occupier's rates. In his (his lordship's) opinion, it was the occupier's rates which had to be deducted, not the rates assessed on the landlord or accepted by the local authority from the landlord in discharge of the rates. The appeal must be dismissed.

COUNSEL: *Linton Thorpe*, K.C., *D. McIntyre* and *E. Falk*, for the appellants; *T. Southall* and *J. D. Walker*, for the respondent.

SOLICITORS: *Simon, Haynes, Barlas & Ireland; W. H. Thompson.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Ronald Bampton & Partners *v.* D. Garner & Sons Ltd.

Hilbery, J. 27th May, 1937.

ESTATE AGENT—PURCHASER INTRODUCED—AGREEMENT REACHED—SELLER'S REFUSAL TO GO THROUGH—RIGHT TO COMMISSION.

Action for agent's commission.

The defendants were developing a building estate, one, Garner, being the director in charge of the development. Garner instructed the plaintiffs, a firm of house agents, to sell certain shops, guaranteeing that, in the event that a sale should be arranged, he would have the shops let at £125 a year on long, full repairing and insuring leases. An offer by a prospective purchaser introduced by the plaintiffs was refused by Garner, but he did not repudiate his guarantee to effect the letting on the terms mentioned. The plaintiffs then procured another purchaser, who, having inspected the shops, made an offer to buy at Garner's price, which Garner, for the defendants, accepted, the guarantee as to letting being repeated. The bargain was confirmed by letter by the plaintiffs, which letter, Hilbery, J., found, accurately represented the mandate given to the plaintiffs, and the terms on which a purchaser was acceptable to the defendants. The defendants' solicitor, who was providing finance for the development of the estate, then, on behalf of the defendant company, refused to accept the figure quoted conditionally on the defendants' undertaking as to letting. While Garner was willing to go through with the sale, the solicitor stated that he refused to do so because the transaction was one-sided as being too advantageous to the buyer. The plaintiffs accordingly brought this action in respect of their lost commission.

HILBERY, J., said that the plaintiffs had under their mandate to introduce a person ready and willing to buy at the price and subject to the conditions which the defendant company, through Garner, had said were acceptable: *Green* v. *Lucas* (1875), 33 L.T. 584; *James* v. *Smith* [1931] 2 K.B. 317*n*; *Martin* v. *Perry & Daw* [1931] 2 K.B. 310. This they did. The buyer was ready, willing, and able to complete the purchase on the conditions arranged, and confirmed by the plaintiffs' letter. Since the decision of the Court of Appeal, which was binding on him (his lordship), whatever his own view might be, in *Trollope (George) & Sons* v. *Martyn Bros.* [1934] 2 K.B. 436, that, in such an employment, in the words of Maugham, L.J., at p. 456, that there was a necessary implication that the employer would not do anything to prevent the earning of the remuneration, unless at any rate he had some just excuse for his interference with the course of events obviously contemplated by both parties when they entered into the contract of employment, it was unnecessary to consider the questions of law which arose on the plaintiffs' alleged causes of action other than the claim for damages for breach of contract. The defendant company had refused to go on with the matter after the plaintiffs had done what they were employed to do, and had thereby put an end to the employment of the plaintiffs and the chance of completion of the sale. It was argued that there was a just excuse for the course the defendants had taken. There were great difficulties in interpreting the expression "just excuse," but it could not be "just excuse" for refusing to perform a contract that, on further consideration, it was far too much, or even entirely, to the advantage of the other party. The plaintiffs had, therefore, established contract and breach. There remained the question of damages. In *Trollope (George) & Sons* v. *Caplan* [1936] 2 K.B. 382, the Court of Appeal had laid it down that, in such a case, before there could be made an award of damages equal to the commission the plaintiffs would have earned if the transaction had gone through, it must be found as a fact that, but for the defendant company's act, a binding contract with the purchaser would have been entered into. Here, the date for completion was not fixed, and there were many matters which might have occasioned a breakdown before all the contract terms were settled. What the plaintiffs' chance of earning their commission was it was difficult to say. On the whole, there could not have been more than an even chance of the sale going through finally. He (his lordship) therefore awarded the plaintiffs £50.

COUNSEL: *H. H. Maddocks*, for the plaintiffs; *D. McIntyre*, for the defendants.

SOLICITORS: *Lionel Lazarus & Leighton; Warmingtons.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Gray (Inspector of Taxes) *v.* Penrhyn.

Finlay, J. 18th June, 1937.

REVENUE—INCOME TAX—DEFALCATIONS BY EMPLOYEE—EMPLOYER RECOUPED BY ACCOUNTANTS—WHETHER SUM REPAID ASSESSABLE TO TAX.

Appeal by the Crown by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The respondent was a coal owner. Two quarry officials in his employ fraudulently misappropriated in the years 1930 to 1933 a total sum of £5,201 by entering in the wages sheets greater sums for wages than were in fact due; £750 were thus misappropriated in 1934. An arrangement was made whereby the chartered accountants acting for the respondent repaid to him the whole amount of the defalcations arising during the period for which they were responsible. The respondent received the repayment in November, 1934. The Crown having made additional assessments on him for the years 1930-31 to 1934-35, the respondent appealed. The Special Commissioners held that it was not open to the Crown to make the additional assessments for those years by reference to the making good which took place in November, 1934; that with regard to the assessment for 1935-36, the £750 might be brought in as the defalcations took place and were made good in the same year; and that the £5,201 could not be brought in as a trading receipt in computing the 1935–36 assessment.

FINLAY, J., said that, as to the £750, there would on one side of the accounts appear £750 as for wages, and, on the other side, £750 as an incoming. If that were right, the Special Commissioners' view as to the rest of the case was startling. If in the year "1" there were an outgoing by reason of peculation on the part of employees, and that were made good in the year "1," it followed in the view of the Special Commissioners that, in that event, the receipt must be brought in, and cancelled the outgoing. But then, if by reason of some delay in discovery, the outgoing were in the year "1," but the incoming did not take place till the year "2," it was startling to suppose that, in that event, a curious advantage was obtained by the taxpayer, namely, that the outgoing stood, but the incoming was not to be brought in. That view could not be correct. The Attorney-General argued

(1) that the previous years could be re-opened, and (2) that the sum of £5,000 odd, when received, was an incoming, a trade receipt, which had to be brought into account in the year in which it was in fact received. He (his lordship) preferred the latter view, but, in his opinion, the Crown would be entitled to succeed on either of them. In his opinion, *British Mexican Petroleum Co., Ltd.* v. *Jackson* (1932), 16 Tax Cas. 570, did not contain anything which would prevent a re-opening of the previous year's assessment. If the respondent had been insured against defalcations, then, following *Gliksten & Son Ltd.* v. *Green* [1929] A.C. 381, the sum paid by the insurance company would have had to be brought in. He (his lordship) took the view that this was simply a business payment and a business receipt. There was a strong presumption that the two things, so to speak, balanced; that was, that since, as an outgoing to these fraudulent people, it had been allowed, so, when that outgoing was made good, the thing ought to be cancelled out, if not by the re-opening of previous years, then, as he (his lordship) preferred, because it is simpler, by the bringing in of the receipt, when it came in. He could not understand the distinction which had been drawn between the £750 and the rest. The whole should, in his opinion, be brought in as a trading receipt, and the appeal must be allowed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the Crown; *F. H. Talbot*, for the respondent.

SOLICITORS: *Solicitor of Inland Revenue; Whitfield, Byrne and Dean.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

British Salmson Aero Engines Ltd. *v.* Commissioners of Inland Revenue.

Finlay, J. 22nd June, 1937.

REVENUE—INCOME TAX—EXCLUSIVE LICENCE GRANTED TO BUILD ENGINES UNDER PATENT—LUMP SUM PAYABLE BY THREE INSTALMENTS—ANNUAL PAYMENTS—ASSESSABILITY.

Appeal by case stated against a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The company, as licensees, were granted exclusive rights for ten years with regard to certain aero engines, and agreed to pay £25,000 as consideration, of which £15,000 were payable on the signing of the agreement, and £5,000 six and £5,000 twelve months thereafter. In addition, there were to be paid "as royalty" ten annual payments of £2,500. On appeal by the company against assessments in respect of all these sums, the Special Commissioners held that the £15,000, £5,000 and £5,000 were instalments of a capital sum, and that the company were not assessable in respect of them under r. 21 of the All Schedules Rules of the Income Tax Act, 1918; but that the ten payments of £2,500 were royalties or other sums paid for the user of a patent, and that the company were assessable in respect of them. The Crown and the company appealed against that decision.

FINLAY, J., said that the present question had been discussed recently in *Commissioners of Inland Revenue* v. *Ramsay* (1935), 154 L.T. 141; 79 SOL. J. 987; *Dott* v. *Brown* (1935), 154 L.T. 484; 79 SOL. J. 610; and *Commissioners of Inland Revenue* v. *Ledgard* (1937), 81 SOL. J. 378. From those cases not much more was to be derived than that the question of capital or income was one to be decided on a survey of the particular facts of a case. A useful indication had been laid down by Walton, J., in *Chadwick* v. *Pearl Life Insurance Co.* [1905] 2 K.B. 507. It was contended for the company that, whatever the annual payments were called, they were simply the purchase price of a thing sold. That argument depended on the fact that here there was granted to the licensees an exclusive right. According to that argument, if there had simply been granted a right not exclusive to construct and use, then there would not have been a sale of property, and the royalties, if royalties they were, would have been appropriately taxed. He could not regard the fact that this was an exclusive right as turning a licence into a sale of property. If, contrary to his view, it could be regarded, not as a licence to use, but as a sale of the whole substratum, so to speak, of the whole property, that would not conclude the question, because it was clear that there might be a sale of property in consideration of an annual payment. The question would therefore remain. There was a distinction to be drawn between this case and such cases as *Constantinesco* v. *R.* (1927), 43 T.L.R. 727, and *Butterworth* v. *Page* (1935), 153 L.T. 34. But this agreement was the grant of a licence to use, and it followed from that that the decision of the Special Commissioners as to this annual sum, for annual it was, expressed to be a royalty, which was part of the consideration, was correct. With regard to the £25,000, his attention had been drawn to a decision of MacKinnon, J., in *Desoutter Bros., Ltd.* v. *Hanger & Co. and Artificial Limb Makers, Ltd.* (1937), 81 SOL. J. 386, which was in point here. But for that decision, he (his lordship) would have thought that there was considerable force in the Attorney-General's argument, and he did not fail to notice that a passage in the judgment of Rowlatt, J., in *Constantinesco* v. *R.*, *supra*, on which MacKinnon, J., placed much reliance there, had apparently to some extent been doubted in a passage in the judgment of Greer, L.J., in *Mills* v. *Jones* (1929), 142 L.T. 337. The decision of MacKinnon, J., was, however, really in point, and he (Finlay, J.) thought that no proper distinction could be drawn between the facts there and those here. That judgment supported the conclusion at which the Special Commissioners had arrived in the matter of the three payments outside the royalties. The appeals must be dismissed.

COUNSEL: *R. Needham*, K.C., and *F. A. Martineau*, for the company; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the Crown.

SOLICITORS: *A. J. Adams & Adams; Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.

Collyer (Inspector of Taxes) *v.* Hoare & Co. Limited.

Finlay, J. 28th June, 1937.

REVENUE — INCOME TAX — BREWERY — TIED HOUSES — "DEFICIENCY OF RENT"—DEDUCTIONS ALLOWABLE BY BREWERS IN CALCULATING.

Appeal by case stated from a decision of the Special Commissioners of Income Tax.

At meetings of the Special Commissioners held in 1935, the respondent company, a firm of brewers, appealed against assessments made upon them under Case I of Sched. D to the Income Tax Act, 1918, in respect of the profits of their trade for the years 1924–25 to 1933–34 inclusive. Where brewers let licensed premises to tied tenants, they are entitled, for purposes of income tax, to a deduction of the "deficiency of rent"—that is, the difference between the rent (including the annual equivalent of any premium from the tenant) paid by the tied tenant and the rent paid by or annual value assessed on the brewers. The respondents claimed to be entitled, in ascertaining the deficiency of rent on their leasehold tied houses, to reckon as additions to the rent paid by them: (i) the annual equivalent of premiums paid by them on acquiring the lease of the premises; (ii) the annual equivalent of the purchase price of the leasehold; (iii) the annual equivalent of sums expended by them on repairs and improvements under a covenant by them in their own lease of the premises; and (iv) the annual equivalent of the amount of debt foregone by them on the assignment to them of the premises by a debtor in discharge of a debt.

The Special Commissioners held that the deductions were allowable. *Cur. adv. vult.*

FINLAY, J., said that the principle that, when it is ascertained that a particular sum is capital it falls to be excluded from income tax, appeared to be clear and thoroughly established. The gist of the matter so far as regarded rent foregone seemed to be given in Lord Sumner's speech in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce* [1915] A.C. 433, at p. 469. In *Hoare & Co. Ltd.* v. *Collyer*, 17 T.C. 169; (C.A.) [1931] 1 K.B. 123; (H.L.) [1932] A.C. 407, the actual decision was that the premium received was a thing to be brought into account and that the annual equivalent of it fell to be added to the rent received by the brewers. ROWLATT, J., arrived at the conclusion that the premium in question there could not be brought into account: see his judgment (17 Tax Cas., at p. 181). The House of Lords made it clear that, in some form or other, premiums could be brought in: see Lord Atkin's speech [1932] A.C., at p. 418. That, and other passages from the various speeches, seemed to make it clear that the comparison was between the sum paid by a tenant, that sum being increased by the premium, and the rent or the Sched. A value. It was not necessary to refer to the general rule of Sched. A, which made it clear that the general test was the full sum which would be paid by a tenant at rack rent. With regard to the main question of premium in the present case, the solution was not that the premium was to be brought in as a premium, but that the sum paid as rent was not the rack rent. It seemed, therefore, that what the premises would fetch at a rack rent had to be taken. Similarly, with regard to the repairs, it seemed that the solution was not that capital repairs were to be allowed, which appeared contrary to every principle of the income tax, but that those repairs, if they added to the value of the premises, would be reflected in the rack rent, if rack rent there were, or in the annual value of the premises. To allow the claim would be to bring into income tax computations capital expenditure. That could not be right. The solution of the matter, looking at it from the other side, might be that what had to be allowed for was reduction of rent only by reason of the tie. The reduction of rent by reason of the fact that there was a premium was not a reduction by reason of the tie, and for that reason the annual equivalent of the premium must be added back. When one came to the other side, no such difficulty existed, and it seemed that the rent or the annual value must be taken. It was conceded that, apart from the special question arising here, the rent or annual value, whichever was the higher, was the thing to be taken. If this view (and it was the view which on this most troublesome matter he (his lordship) had formed) were right, the principle was maintained that the capital payments and receipts were not taken into account. On the one side, the premium was considered only to arrive at the figure of rent foregone by reason of the tie. On the other side, the comparison was with annual value or rent. The case was one of unusual difficulty, but on the whole he thought that the Commissioners made a mistake in applying and following, as they did, the dictum of Rowlatt, J., in *Collyer* v. *Hoare & Co. Ltd.*, *supra*.

The appeal must be allowed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the Crown; *A. M. Latter*, K.C., and *Cyril King*, K.C., for the respondents.

SOLICITORS: *The Solicitor of Inland Revenue; Godden, Holme & Ward.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Re Hammersmith (Berghem Mews) Clearance Order, 1936 (Appeal of Wilmot and Another).

Swift, J. 7th July, 1937.

HOUSING—CLEARANCE ORDER—BUILDING CONSISTING OF GARAGE WITH DWELLING ROOMS ABOVE—ROOMS CONSIDERED INSANITARY—ORDER MADE IN RESPECT OF WHOLE BUILDING—VALIDITY—HOUSING ACT, 1930 (20 & 21 Geo. 5, c. 39), s. 1.

Appeal under s. 11 of the Housing Act, 1930.

In July, 1936, Hammersmith Borough Council made a clearance order under the Act in respect of Berghem Mews, which order affected property belonging to the appellant, Wilmot, and consisting of premises composed of garages and workshops at ground level with dwelling-houses above them. A public local enquiry was duly held and the Minister of Health in due course confirmed the order. The present appeal was against that confirmation.

SWIFT, J., said that it had been contended for the appellant that, although it might be right to order the demolition of the dwelling-houses which were above the garages and workshops in Berghem Mews, it was outside the powers of the Act to order the demolition of the garages and workshops themselves, because they were not in themselves insanitary, were not part of the dwelling-houses, and did not come within s. 1 (1) of the Act of 1930. He (his lordship) was unable to accept that contention. The dwelling-house above and the garage or workshop below were all part of the same edifice. It seemed impossible to say, when the local authority had come to the conclusion that they were insanitary for the purpose, that any portion of them should be used as dwelling-houses, and that the proper way of dealing with them was for them all to be swept away; that they were to be bisected horizontally so that that portion which had previously been used for living in should go, and that portion in which people had only worked should remain. The only question for him was whether the council had done anything which was not within their powers under the Act. That they had failed to comply with any requirement of the Act had not been suggested. The ground upon which it is contended that it was not within the council's power to make the clearance order that they made was that, if the dwelling-house part were to be taken away, and certain repairs were then effected to that part of the building which remained, that part might become a desirable garage, and, at any rate, could not be a danger to anybody living in the neighbourhood. That was no answer to the power of the local authority to act under the Housing Act, 1930, s. 1 (1). The garages were part of the dwelling-houses, and the rooms above stood or fell with the garage below. If the rooms above were taken away, only some doors and walls remained. There was no roof. It seemed fantastic to suggest that the buildings were partly dwelling-houses and partly not, and that, therefore, the council could deal only with the part which was a dwelling-house. Much the same argument had been advanced before the court in *Re Falmouth Clearance Order* (81 SOL. J. 590), and the argument was rejected then. The appeal must be dismissed.

COUNSEL: *Henn Collins*, K.C., and *H. Heathcote-Williams*, for the appellant; *Valentine Holmes*, for the Minister.

SOLICITORS: *Herbert A. Phillips; Solicitor to the Ministry of Health.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Societies.

The Law Society.

ANNUAL PROVINCIAL MEETING.

The Council of The Law Society have settled the following course of procedure to be adopted at the Fifty-third Provincial Meeting to be held on Tuesday and Wednesday, the 28th and 29th September, 1937, at The Barnfield Hall, Barnfield, Exeter. (Mr. Francis Edward James Smith, President.)

Tuesday, 28th September, 1937, at 10.30 a.m., at The Barnfield Hall, Barnfield, Exeter. The proceedings will commence with the President's address. This will be followed until the luncheon interval by a discussion on the work of The Law Society and of the Council. After luncheon, the following papers will be read:—"Income Tax," by Randle F. W. Holme, B.A. Oxon. (London); "Some Aspects of the Legal Education of a Country Solicitor," by H. Gallienne Lemmon, M.A., LL.M. (King's Lynn).

Wednesday, 29th September, 1937, at 10.30 a.m., at The Barnfield Hall, Barnfield, Exeter—"An Aspect of the Need for Law Revision," by James Whiteside (Exeter); "Legal Obstacles to Industrial Integration," by Geoffrey Vickers, V.C. (London); "Valuations: The Hypothetical Purchaser," by George Beloe Ellis (London).

The President may make such alteration in the order of the papers as he may think convenient.

Solicitors' Benevolent Association.

The Annual General Meeting of the Solicitors' Benevolent Association will be held at Exeter at 9.45 a.m., on Wednesday, the 29th September.

Legal Notes and News.

Honours and Appointments.

Mr. C. L. HOFFROCK GRIFFITHS, Solicitor, Deputy Clerk to the Bexley U.D.C., has been appointed Town Clerk of Boston, Lincolnshire. Mr. Griffiths was admitted a solicitor in 1929.

Mr. R. T. HIGHET, Solicitor, of Birkenhead, has been appointed first Coroner of Wallasey. Mr. Highet was admitted a solicitor in 1925.

Professional Announcements.

(2s. per line.)

Mr. P. G. W. SOWMAN, solicitor, announces that he has removed from 30, The Broadway, Wimbledon, and that from the 5th August, 1937, he will carry on his practice at 16A, THE BROADWAY, WIMBLEDON, S.W.19. The telephone number (Wimbledon 1082) will remain unchanged.

Notes.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, the 24th day of September, 1937, at 11 o'clock in the forenoon.

Sir Maurice Gwyer, late First Parliamentary Counsel to the Treasury, left London last Wednesday to take up the new appointment of Chief Justice of India. He will be the head of the Federal Court which is to be constituted on 1st October.

A collection of fourteen of Lord Macmillan's essays and addresses, under the general title of "Law and Other Things," is announced for October publication by the Cambridge University Press. They deal with the general relations of law to certain other aspects of human life; as, for example, politics, order, religion, ethics, literature, history and citizenship; two lectures are on the art of advocacy, and three papers discuss the work of Lord Chancellor Birkenhead.

A motion viewing with concern the growing limitation upon the activities of journalists in police courts was carried at the annual conference of the Institute of Journalists at Margate last Tuesday, says *The Times*. The executive was instructed to make representations both to the Home Secretary and the Magistrates' Association with the object of regularising the practice of making charge sheets available in all cases where the information was to be used for the *bona fide* reporting of the case.

The next examinations of the London Association of Certified Accountants will be held on 7th, 8th and 9th December, in Belfast, Birmingham, Bristol, Cardiff, Cork, Dublin, Edinburgh, Glasgow, Hull, Leeds, Liverpool, London, Manchester, Newcastle-on-Tyne, Nottingham, Plymouth and Sheffield. Women are eligible under the Association's regulations to qualify as certified accountants upon the same terms and conditions as are applicable to men. Particulars and forms are obtainable at the offices of the Association, 50, Bedford Square, London, W.C.1.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 23rd September, 1937.

	Div. Months.	Middle Price 15 Sept. 1937.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	107½	3 14 5	3 9 1
Consols 2½%	JAJO	73½	3 8 0	—
War Loan 3½% 1952 or after	JD	100⅜	3 9 9	3 9 4
Funding 4% Loan 1960-90	MN	110½	3 12 5	3 6 9
Funding 3% Loan 1959-69	AO	94½xd	3 3 6	3 5 8
Funding 2¾% Loan 1952-57	JD	93½	2 18 10	3 3 11
Funding 2½% Loan 1956-61	AO	87xd	2 17 6	3 5 10
Victory 4% Loan Av. life 22 years	MS	107½	3 14 5	3 10 2
Conversion 5% Loan 1944-64	MN	113⅜	4 8 2	2 11 3
Conversion 4½% Loan 1940-44	JJ	106½	4 4 8	2 6 5
Conversion 3½% Loan 1961 or after	AO	99½	3 10 6	—
Conversion 3% Loan 1948-53	MS	98½	3 1 1	3 2 11
Conversion 2½% Loan 1944-49	AO	94¾	2 12 9	3 0 6
Local Loans 3% Stock 1912 or after	JAJO	84¾	3 10 9	—
Bank Stock	AO	338½	3 10 10	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	77	3 11 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	84	3 11 5	—
India 4½% 1950-55	MN	112	4 0 4	3 6 10
India 3½% 1931 or after	JAJO	91½	3 16 6	—
India 3% 1948 or after	JAJO	77½	3 17 5	—
Sudan 4½% 1939-73 Av. life 27 years	FA	111	4 1 1	3 16 10
Sudan 4% 1974 Red. in part after 1950	MN	109	3 13 5	3 2 11
Tanganyika 4% Guaranteed 1951-71	FA	108	3 14 1	3 4 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	105	4 5 9	3 5 6
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	87	2 17 6	3 9 7
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	104	3 16 11	3 13 10
Australia (Commonw'th) 3% 1955-58	AO	88xd	3 8 2	3 16 11
Canada 4% 1953-58	MS	107	3 14 9	3 8 6
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
New South Wales 3½% 1930-50	JJ	97	3 12 2	3 16 0
New Zealand 3% 1945	AO	96	3 2 6	3 12 5
Nigeria 4% 1963	AO	110	3 12 9	3 8 4
Queensland 3½% 1950-70	JJ	96	3 12 11	3 14 4
South Africa 3½% 1953-73	JD	101	3 9 4	3 8 4
Victoria 3¼% 1929-49	AO	96	3 12 11	3 18 6
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	86½	3 9 4	—
Croydon 3% 1940-60	AO	94	3 3 10	3 7 5
*Essex County 3½% 1952-72	JD	102	3 8 8	3 6 8
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	98	3 11 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	83	3 12 3	—
Manchester 3% 1941 or after	FA	83	3 12 3	—
Metropolitan Consd. 2½% 1920-49	MJSD	94	2 13 2	3 2 2
Metropolitan Water Board 3% "A" 1963–2003	AO	85½xd	3 10 2	3 11 5
Do. do. 3% "B" 1934-2003	MS	86½	3 9 4	3 10 6
Do. do. 3% "E" 1953-73	JJ	93½	3 4 2	3 6 3
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 6 2
* Do. do. 4½% 1950–70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable	MN	84½	3 11 0	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	105¼	3 15 10	—
Gt. Western Rly. 4½% Debenture	JJ	116½	3 17 3	—
Gt. Western Rly. 5% Debenture	JJ	128½	3 17 10	—
Gt. Western Rly. 5% Rent Charge	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	124	4 0 8	—
Gt. Western Rly. 5% Preference	MA	116½	4 5 10	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 12 1
Southern Rly. 5% Guaranteed	MA	125	4 0 0	—
Southern Rly. 5% Preference	MA	113½	4 8 1	—

*Not available to Trustees over par.

‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

1937

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Stock
1937.

Approximate Yield with Redemption
£ s. d.
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2 6 5
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3 6 10
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3 16 10
2 11
4 9
5 6
9 7
13 10
16 11
8 6
2 3
16 0
12 5
8 4
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8 4
18 6
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